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HOFFMAN WARNICK & DALESSANDRO LLC			JEAN GILLES, JUDE	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/803,236	<b>Applicant(s)</b> HAYES, KENT F.
	<b>Examiner</b> JUDE J. JEAN GILLES	<b>Art Unit</b> 2143

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 08 January 2008.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-24 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 18 March 2004 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-166/08)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

**DETAILED ACTION**

This office action is in reply to communication filed on 01/08/2008.

***Information Disclosure Statement***

1. The references listed on the Information Disclosure Statement submitted on 03/18/2004, and 06/14/2004 have been considered by the examiner (see attached PTO-1449A).

***Response to Amendment/Arguments***

2. Claims 1-24 remain pending in the application with claim 11 amended. No new claim has been added and no claim has been cancelled. Claims 1-24 represent a method and apparatus for a "METHOD, SYSTEM AND PROGRAM PRODUCT FOR USING OPEN MOBILE ALLIANCE (OMA) ALERTS TO SEND CLIENT COMMANDS/REQUESTS TO AN OMA DM SERVER."

Applicant's arguments with respect to independent claims 1, 6, 11, and 16 have been carefully considered, but are not deemed fully persuasive. Applicant's arguments are deemed moot in view of the existing ground of rejection as explained here below. Applicants have made no substantial amendment to the claims as to perhaps place them in condition for allowance.

The dependent claims stand rejected as articulated in the First Office Action and all objections not addressed in Applicant's response are herein reiterated.

In response to Applicant's arguments, 37 CFR § 1.11(c) requires applicant to "clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. He or she must show the amendments avoid such references or objections."

Applicant's Request for Reconsideration filed on 01/08/2008 has been carefully considered but is not deemed fully persuasive. However, because there exists the likelihood of future presentation of this argument, the Examiner thinks that it is prudent to address Applicants' main points of contention:

Applicant contends that the rejections of claims 1,5, 6, 10, 11, 15-20, and 24 under 35 U.S.C. 102(e) over Rao (U.S. 2005/0182697) and claims 2-4, 7-9, 12-14, and 21-23 under 35 U.S.C. 103(a) over Rao in view of Mittal (U.S. 2005/0022182) are defective mainly because inter alia, the cited references taken alone or in combination, fail to teach or suggest each and every feature of the claims. Specifically, Applicants argue that Rao and/or Mittal does not teach inter alia " "sending an Open Mobile Alliance (OMA) device management (DM) alert from a client device to an OMA DM server to initiate a management action on the OMA DM server." The Examiner disagrees with Applicants' assertion. Rao teaches a system in which, a ODM DM client interact with a ODM MD server through managements actions such as requests and reporting of events and alerts from the client to the server (see abstract). Further, in par. 0017, it is disclosed that the client device initiates the type of management action described above to the ODM MD server.

Examiner notes that no new matter has been added and that the new claims are supported by the application as filed. However, applicant has failed in presenting claims and drawings that delineate the contours of this invention as compared to the cited prior art. Applicant has failed to clearly point out patentable novelty in view of the state of the art disclosed by the references cited that would overcome the 102(e) anticipation and the 103(a) rejections applied against the claims, the rejection is therefore sustained.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. **Claims 1, 5, 6, 10, 11, 15-20, and 24 are rejected** under 35 U.S.C. 102(e) as being anticipated Rao, U.S. Pub. No. US 20050182697 A1.

Regarding **claim 1**, Rao discloses a computer-implemented method (*fig. 1*), comprising:

sending an Open Mobile Alliance (OMA) device management (DM) alert from a client device to an OMA DM server to initiate a management action on the OMA DM server (*lines 1-9 of par. 0017; in fig. 1, item 107 is the OMA DM client, item 109 is the OMA DM server; and item 117 is the network ensuring two way communication*

*between client and server, processing the OMA DM alert from client to server and replying to the request; see also par. 0020, par. 0022 and 0024; upload of management content from client 107 to server 109); and*

*sending a reply from the OMA DM server to the client device in response to the OMA DM alert (lines 9-14 of par. 0017; see also par. 0020, par. 0022 and 0024, download of management content from server 109 to client 107).*

5. The method of claim 1, wherein:

*the OMA DM alert sent by the client device to the OMA DM server comprises a command/request for software on the OMA DM server, and wherein the reply sent from the OMA DM server to the client device comprises the software (lines 1-8 of par. 0017; note that the billing code return to the client is the software in question).*

6. A computerized system (*fig. 1*), comprising:

*a command/request system for sending an Open Mobile Alliance (OMA) device management (DM) alert from a client device to an OMA DM server to initiate a management action on the OMA DM server (lines 1-9 of par. 0017; in fig. 1, item 107 is the OMA DM client, item 109 is the OMA DM server, and item 117 is the network ensuring two way communication between client and server, processing the OMA DM alert from client to server and replying to the request; see also par. 0020, par. 0022 and 0024; upload of management content from client 107 to server 109); and*

a request processing system for sending a reply from the OMA DM server to the client device in response to the OMA DM alert (*lines 9-14 of par. 0017; see also par. 0020, par. 0022 and 0024, download of management content from server 109 to client 107*).

10. The system of claim 6, wherein:

the OMA DM alert sent by the client device to the OMA DM server comprises a command/request for software on the OMA DM server, and wherein the reply sent from the OMA DM server to the client device comprises the software (*lines 1-8 of par. 0017; note that the billing code return to the client is the software in question*).

11. A program product stored on a computer recordable medium (fig. 1), comprising when executed :

program code for sending an Open Mobile Alliance (OMA) device management (DM) alert from a client device to an OMA DM server to initiate a management action on the OMA DM server (*lines 1-9 of par. 0017; in fig. 1, item 107 is the OMA DM client, item 109 is the OMA DM server; and item 117 is the network ensuring two way communication between client and server, processing the OMA DM alert from client to server and replying to the request; see also par. 0020, par. 0022 and 0024; upload of management content from client 107 to server 109*); and

program code for sending a reply from the OMA DM server to the client device in response to the OMA DM alert (*lines 9-14 of par. 0017; see also par. 0020, par. 0022 and 0024, download of management content from server 109 to client 107*).

15. The program product of claim 11, wherein:

the OMA DM alert sent by the client device to the OMA DM server comprises a command/request for software on the OMA DM server, and wherein the reply sent from the OMA DM server to the client device comprises the software (*lines 1-8 of par. 0017; note that the billing code return to the client is the software in question*).

16. A computer-implemented method (*fig. 1*), comprising:

sending a notification from a client device to an Open Mobile Alliance (OMA) device management (DM) server to initiate a management action on the OMA DM server (*lines 1-9 of par. 0017; in fig. 1, item 107 is the OMA DM client, item 109 is the OMA DM server; and item 117 is the network ensuring two way communication between client and server, processing the OMA DM alert from client to server and replying to the request; see also par. 0020, par. 0022 and 0024; upload of management content from client 107 to server 109*); and

sending a reply from the OMA DM server to the client device in response to the notification (*lines 9-14 of par. 0017; see also par. 0020, par. 0022 and 0024, download of management content from server 109 to client 107*).

17. The method of claim 16, wherein the notification comprises an OMA DM alert (*lines 1-9 of par. 0017; in fig. 1, item 107 is the OMA DM client, item 109 is the OMA DM server; and item 117 is the network ensuring two way communication between client and server, processing the OMA DM alert from client to server and replying to the request; see also par. 0020, and par. 0022*).
18. The method of claim 16, wherein the notification comprises an SNMP Trap (*par. 0020*).
19. The method of claim 16, wherein the notification comprises a TEC Event (*par. 0020; the TEC events are assumed to be the asynchronous events described in this paragraph; applicants provide no specific definition for those even in the specifications; the TEC event are assumed to be comprised just as the OMA DM alert within the OMA DM client notification and are OMA DM client generated events*).
20. The method of claim 16, wherein the notification comprises a SyncML DM alert (*par. 0017*).
24. The method of claim 16, wherein:  
the notification sent by the client device to the OMA DM server comprises a command/request for software on the OMA DM server, and wherein the reply sent from

the OMA DM server to the client device comprises the software (*lines 1-8 of par. 0017; note that the billing code return to the client is the software in question*).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. **Claims 2-4, 7-9, 12-14, and 21-23** are rejected under 35 U.S.C. 103(a) as being unpatentable over Rao, in view of Mittal, U.S. Pub. No. 6 US 20050022182 A1.

Regarding **claim 2**, Rao teaches the invention substantially as claimed. Rao discloses the computer-implemented method of claim 1, but does not show the details of a method wherein “the OMA DM alert sent by the client device to the OMA DM server comprises a command/request for a list of software on the OMA DM server available for distribution to the client device, and wherein the reply sent from the OMA DM server to the client device comprises the list of available software”.

In an analogous art, Mittal shows a technique to facilitate downloading of an application from at least one server computer to a client device, whereby the client device generates to the server computer an initiation request for information describing available applications using a content/application download model (CADM), such as a Java Application Management System (Java-AMS), Open Mobile Alliance-Content

Download (OMA-CoD), or the like (see par. 0007, and 0029.). Mittal further discloses “*In event 406, the server computer 104 receives the initiation message from the handheld device 108 and, in event 408, the server computer 104 retrieves descriptive information, such as text and/or a graphic, about each application that is available for downloading to the handheld device 108. In accordance with principles of the present invention, the server computer 104 also retrieves, for each respective application identified as being available for downloading, a link (e.g., a Uniform Resource Locator (URL), a Uniform Resource Identifier (URI), or the like) to an application descriptor (i.e., a set of attributes describing an application) for such respective application. The retrieved information about each application and its respective link is then transmitted to the client handheld device 108*” (see Mittal, par. 0026, also see fig. 4, items 408-410). It is important to note that the text and/or graphic about each available application for download on the server represents “the list of available software available for distribution” as stated in the claim language. In an attempt to create a system that is flexible, and cost effective, allowing wireless client devices such as PDA and cellular telephones to download available application without direct intervention of a service provider and/or technician, this intriguing combination of using an OMA DM client/server system with the capabilities of a client to determine that an application is suitable and available for download from a server prior to download proceedings offers the benefits of improving and promoting software distribution using wireless technologies.

Accordingly, it would have been obvious to one of ordinary skill in the networking art at the time the invention was made to have incorporated Mittal's teachings of a

system of a server transmitting a list of software available for download with the teachings of Rao, for the purpose of "...enabling service providers to more readily maintain the same end-user experience notwithstanding different download technologies, thereby streamlining the download of applications while offering a process that is transparent to the end user, and that requires no special knowledge on the part of the end user to utilize..." as stated by Mittal in par. 0010. By this rationale **claim 2 is rejected.**

**Regarding claims 3, 4, 7-9, 12-14, and 21-23,** the combination Rao-Mittal teaches:

3. The method of claim 2, further comprising:

sending a second OMA DM alert from the client device to the OMA DM server, wherein the second OMA DM alert comprises a command/request for selected software on the list of available software (*see Mittal; lines 12-18 of par. 0007; also, see fig. 4, items 418-428*). The same motivation and reason to combine that were used for the rejection of claim 2 is also valid for this claim. By this rationale, **claim 3 is rejected.**

4. The method of claim 3, wherein:

in response to the second OMA DM alert, sending the selected software from the OMA DM server to the client device (*see Mittal; par. 0030; see also fig. 4, items 430-434*). The same motivation and reason to combine that were used for the rejection of claim 2 is also valid for this claim. By this rationale, **claim 4 is rejected.**

7. The system of claim 6, wherein:

the OMA DM alert sent by the client device to the OMA DM server comprises a command/request for a list of software on the OMA DM server available for distribution to the client device, and wherein the reply sent from the OMA DM server to the client device comprises the list of available software (*see Mittal, par. 0026, also see fig. 4, items 408-410*). The same motivation and reason to combine that were used for the rejection of claim 2 is also valid for this claim. By this rationale, **claim 7 is rejected**.

8. The system of claim 7, wherein:

the command/request system sends a second OMA DM alert from the client device to the OMA DM server, and wherein the second OMA DM alert comprises a command/request for selected software on the list of available software (*see Mittal; lines 12-18 of par. 0007; also, see fig. 4, items 418-428*). The same motivation and reason to combine that were used for the rejection of claim 2 is also valid for this claim. By this rationale, **claim 8 is rejected**.

9. The system of claim 8, wherein:

the OMA DM server sends the selected software from the OMA DM server to the client device in response to the second OMA DM alert (*see Mittal; par. 0030; see also fig. 4, items 430-434*). The same motivation and reason to combine that were used for the rejection of claim 2 is also valid for this claim. By this rationale, **claim 9 is rejected**.

12. The program product of claim 11, wherein:

the OMA DM alert sent by the client device to the OMA DM server comprises a command/request for a list of software on the OMA DM server available for distribution to the client device, and wherein the reply sent from the OMA DM server to the client device comprises the list of available software (*see Mittal, par. 0026, also see fig. 4, items 408-410*). The same motivation and reason to combine that were used for the rejection of claim 2 is also valid for this claim. By this rationale, **claim 12 is rejected.**

13. The program product of claim 12, further comprising:

program code for sending a second OMA DM alert from the client device to the OMA DM server, wherein the second OMA DM alert comprises a command/request for selected software on the list of available software (*see Mittal; lines 12-18 of par. 0007; also, see fig. 4, items 418-428*). The same motivation and reason to combine that were used for the rejection of claim 2 is also valid for this claim. By this rationale, **claim 13 is rejected.**

14. The program product of claim 13, further comprising:

program code for sending the selected software from the OMA DM server to the client device, in response to the second OMA DM alert (*see Mittal; par. 0030; see also fig. 4, items 430-434*). The same motivation and reason to combine that were used for the rejection of claim 2 is also valid for this claim. By this rationale, **claim 14 is**

**rejected.**

21. The method of claim 16, wherein:

the notification sent by the client device to the OMA DM server comprises a command/request for a list of software on the OMA DM server available for distribution to the client device, and wherein the reply sent from the OMA DM server to the client device comprises the list of available software (*see Mittal, par. 0026, also see fig. 4, items 408-410*). The same motivation and reason to combine that were used for the rejection of claim 2 is also valid for this claim. By this rationale, **claim 21 is rejected.**

22. The method of claim 21, further comprising:

sending a second notification from the client device to the OMA DM server, wherein the second notification comprises a command/request for selected software on the list of available software (*see Mittal; lines 12-18 of par. 0007; also, see fig. 4, items 418-428*). The same motivation and reason to combine that were used for the rejection of claim 2 is also valid for this claim. By this rationale, **claim 22 is rejected.**

23. The method of claim 22, wherein:

in response to the second notification, sending the selected software from the OMA DM server to the client device (*see Mittal; par. 0030; see also fig. 4, items 430-434*). The same motivation and reason to combine that were used for the rejection of

claim 2 is also valid for this claim. By this rationale, **claim 23 is rejected**

***Conclusion***

7. **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from examiner should be directed to Jude Jean-Gilles whose telephone number is (571) 272-3914. The examiner can normally be reached on Monday-Thursday and every other Friday from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Flynn, can be reached on (571) 272-1915. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-3301.

Art Unit: 2154

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-0800.

Jude Jean-Gilles

Patent Examiner

Art Unit 2143

JJG

March 18, 2008

/Nathan J. Flynn/

Supervisory Patent Examiner, Art Unit 2154